contract of affreightment. *Kish v. Taylor* [1911] 1 K. B. 625. But the master must act in good faith and exercise his best discretion for the benefit of all concerned. *New England Insurance Co. v. The Sarah Ann* (1839) 13 Pet. (U. S.) 400; *The Amelie* (1867) 6 Wall. (U. S.) 27. In the principal case the court came to the conclusion that the captain exercised no discretion, but merely obeyed the order of the owners, and that his action could be justified only if it fell within the stipulated exception. This is a question to be answered from all the circumstances, but the conclusion does not seem entirely necessary. If the shipmaster had known the actual stiuation, and had pursued exactly the same course on his own initiative, he would have been justified in fact, especially when it appears that the delivery of the gold of the National City Bank would have brought him into Cherbourg only a day before the actual declaration of war.

F. W. D.

CONTRACTS—IMPOSSIBILITY OF PERFORMANCE.—BERG V. ERICKSON (1916) 234 FED. 817.—E, a resident of Kansas, showed B, a resident of Texas, who knew nothing of Kansas conditions, certain pastures into which he proposed to put B's cattle, and contracted to furnish plenty of good grass, salt and water during the grazing season, for which B agreed to pay him $7 per head. The worst drought ever known in Kansas made it impossible for E to furnish plenty of good grass in July, August, September and October, although he furnished plenty during May and June, and sufficient the other months to keep the cattle alive. *Held,* that E was not absolved from his contract by the unprecedented drought.

An act of God will excuse the non-performance of a duty created by law but not one created by contract. *Davidson v. Gaskill* (1912) 121 Pac. (Okl.) 649; *Worthington v. Charter Oak Fire Ins. Co.* (1874) 41 Conn. 372. But an exception is made where the parties contracted on the basis of the continued existence of a person or thing, and where the subject matter of the contract is destroyed. *Howell v. Coupland* (1876) 1 Q. B. D. 258; *Singleton v. Carrol* (1831) 22 Am. Dec. (Ky.) 95. Where a contract called for a minimum quantity of peaches, to be grown in specific orchards which the defendant's agents had inspected, failure of performance in full, due to an unexpected drought, was excused. *Ontario v. Cutting Packing Co.* (1901) 134 Cal. 21. It would seem that the principal case might have been decided in the same way, since the parties presumably contracted for specific grass, in the sense that it was to be grown on the lands in question.

J. I. S.

EVIDENCE—PRIVILEGE AGAINST SELF-INCRIMINATION—COMPULSORY INFORMATION AS TO AUTOMOBILE ACCIDENTS.—STATE V. STERRIN (1916) 98 ATL. (N. H.) 482.—Defendant was convicted of violating a statute requiring an automobile driver, knowing he has injured a person, to return to the scene of the accident, and give his name, address, license number, and other information to any person demanding the same. Defendant con-

tended that the statute violated that part of the New Hampshire Constitition, Bill of Rights, art. 15, which provides that "no subject shall . . . be compelled to accuse or furnish evidence against himself." *Held,* that the statute was constitutional.

The principal case, though the first in its jurisdiction, seems to represent the general rule. *Ex parte Diller* (1914) 142 Pac. (Cal.) 797; *People v. Rosenheimer* (1913) 209 N. Y. 115; *Ex parte Kneedler* (1912) 243 Mo. 632. The fundamental basis for the decision in the principal case does not involve the question, whether such information as the defendant was required to give, constituted evidence, thus bringing him within the exemption expressed by the state constitution, but the broader proposition of waiver. When one accepts the statutory privilege of operating a motor vehicle he subjects himself to the condition attached. *Ex parte Kneedler, supra.* A state might prohibit the operation of motor vehicles altogether on public highways. *People v. Diller, supra; People v. Rosenheimer, supra. A fortiori* the state may regulate their operation. An analogy is presented where an accused in a criminal action takes the witness stand. He thereby waives his privilege of not giving incriminating evidence against himself on cross-examination. *State v. Danforth* (1905) 73 N. H. 215. Many cases bear out the principle of waiver. *State v. Henwood* (1900) 123 Mich. 317; *State v. Davis* (1910) 69 S. E. (W. Va.) 639. It is submitted, therefore, that the decision in the principal case is correct on the theory of waiver of the constitutional privilege.

L. W. B.

EVIDENCE—SUBSTANTIVE LAW—ADMISSIBILITY OF ORAL WARRANTIES VARYING A WRITTEN CONTRACT.—RITTENHOUSE-WINTERSON AUTOMOBILE CO. V. KISSNER (1916) 98 ATL. (MD.) 361.—The defendant, vendor of an automobile truck, wrote the contract of sale upon a blank form of the manufacturer with whom the plaintiff vendee supposed he was dealing. Not until the second payment was made did vendee discover that the defendant was the true party in interest. *Held,* that the defendant's oral warranties accompanying the written contract of sale as to the quality and condition of the truck were admissible despite the defendant's objection that they tended to vary the terms of a written contract.

Evidence of an oral warranty relating to an article which is the subject matter of a written contract of sale is generally inadmissible. *Osgood v. Davies* (1841) 18 Me. 146; *Hahn v. Doolittle* (1864) 18 Wis. 196. But extrinsic evidence may be admitted to prove the written contract is not the real agreement. *Gottfried v. Bray* (1907) 208 Mo. 652; *Ginther v. Townsend* (1910) 78 Atl. (Md.) 908; *Colonial Park Estates v. Massart* (1910) 112 Md. 648. There is no doubt that, upon learning that the defendant was the true vendor, the plaintiffs could have avoided the contract and recovered the payment already made. *Cox v. Prentice* (1815) 3 M. & S. 344; *Lippincott v. Whitman* (1877) 83 Pa. St. 244; *Ballard v. Lyons* (1911) 114 Minn. 264; *Selby v. Watson* (1908) 137 Ia. 97. Or they might well be entitled to set up the true agreement with the defendant, consisting of both the written and oral stipulations, were it not for